

# EXHIBIT B

**Murphy**

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1       IN THE UNITED STATES DISTRICT COURT  
2       FOR THE MIDDLE DISTRICT OF ALABAMA  
3               NORTHERN DIVISION

4  
5       HAROLD KELLY MURPHY,  
6               Plaintiff,

7  
8       vs.               Case No.: 2:06-CV-618-MEF

9  
10       SOUTHERN ENERGY HOMES, INC., et al.,  
11               Defendants.

12  
13               \*    \*    \*    \*    \*    \*

14       DEPOSITION OF HAROLD KELLY MURPHY,  
15       taken pursuant to notice and  
16       stipulation on behalf of the  
17       Defendants, at Beasley, Allen, 272  
18       Commerce Street, Montgomery, Alabama,  
19       before Bridgette Mitchell, Shorthand  
20       Reporter and Notary Public in and for  
21       the State of Alabama at Large, on  
22       November 13, 2007, commencing at  
23       9:40 a.m.

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1 APPEARANCES

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4 FOR THE PLAINTIFF:

5 C. Lance Gould, Esquire

6 BEASLEY, ALLEN, CROW, METHVIN,

7 PORTIS & MILES, P.C.

8 218 Commerce Street

9 Montgomery, Alabama 36104

10

11

12 FOR THE DEFENDANTS:

13 W. Scott Simpson, Esquire

14 RITCHEY & SIMPSON, P.C.

15 3288 Morgan Drive

16 Birmingham, Alabama 35216

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19 ALSO PRESENT:

20 David Tompos

21 Jim Bauer

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1 STIPULATIONS

2 It is hereby stipulated and  
3 agreed by and between counsel  
4 representing the parties that the  
5 deposition of HAROLD KELLY MURPHY is  
6 taken pursuant to notice and  
7 stipulation on behalf of the  
8 Defendants; that all formalities with  
9 respect to procedural requirements are  
10 waived; that said deposition may be  
11 taken before Bridgette Mitchell,  
12 Shorthand Reporter and Notary Public in  
13 and for the State of Alabama at Large,  
14 without the formality of a commission;  
15 that objections to questions, other  
16 than objections as to the form of the  
17 questions, need not be made at this  
18 time, but may be reserved for a ruling  
19 at such time as the deposition may be  
20 offered in evidence or used for any  
21 other purpose as provided for by the  
22 Civil Rules of Procedure for the State  
23 of Alabama.

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1           It is further stipulated and  
2   agreed by and between counsel  
3   representing the parties in this case  
4   that the filing of the deposition of  
5   HAROLD KELLY MURPHY is hereby waived  
6   and that said deposition may be  
7   introduced at the trial of this case or  
8   used in any other manner by either  
9   party hereto provided for by the  
10   Statute, regardless of the waiving of  
11   the filing of same.

12           It is further stipulated and  
13   agreed by and between the parties  
14   hereto and the witness that the  
15   signature of the witness to this  
16   deposition is hereby waived.

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9

10 COURT REPORTER: Usual  
11 stipulations?

12 MR. GOULD: Yes.

13 HAROLD KELLY MURPHY, having  
14 first been duly sworn or affirmed to  
15 speak the truth, the whole truth, and  
16 nothing but the truth, testified as  
17 follows:

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1 house?

2 A. Just one.

3 Q. I met your mother. Nice lady.

4 A. Thank you.

5 Q. Well, let me take you back in time to

6 when you first got involved with the

7 house. When was the first time you saw

8 the house?

9 A. Around November of 2003.

10 Q. Was it a lot model that was on --

11 A. It was.

12 Q. So this home wasn't special ordered for

13 you?

14 A. No, sir.

15 Q. What made you decide to buy this

16 particular house?

17 A. I looked at a bunch of them. And they

18 told me that Southern Energy -- I had

19 Fleetwood before, and they said that

20 Southern Energy was top of the line,

21 had hurricane-proofing on it and had

22 two-by-six walls and good floors, that

23 look and all. And I bought that one --

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1 I liked the floor plan, and that one  
2 had been on the lot about six months  
3 and they said, We'll give you, like, a  
4 few thousand dollars off of it if  
5 you'll take this one because it would  
6 be time to get a new one or something.

7 Q. Turn it in?

8 A. Yeah. And that's why I ended up with  
9 that one.

10 Q. I saw the numbers. Looks like you got  
11 a heck of a good deal on it.

12 A. Yeah.

13 Q. Did you inspect the home, everything  
14 looked okay?

15 A. Yeah, everything looked fine.

16 Q. Tell me about the Fleetwood home you  
17 had. What kind of home was that?

18 A. It was a single-wide, a sixteen-by-  
19 sixty; Regency or something. It was  
20 just a -- it was just a first-time. My  
21 mother actually went up there and -- I  
22 was living with her and she said, It's  
23 time for you to go. And she went and



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1 cool, but that was dripping.

2 Q. Was it just certain -- during certain  
3 times of year? Do you know?

4 A. I can't remember. But, I mean, I think  
5 my wife might have seen it because  
6 after it rained, thought it was -- I  
7 said, Dang thing is leaking. I knew  
8 it. But when the rain was gone, it's  
9 done it -- it's done it four or five  
10 different times. It's like it sweats.  
11 I mean, not in the wall, outside. You  
12 can see water actually running down the  
13 wall just like you got out of the  
14 shower or something. You know how the  
15 thing be fogged up? It was like that.

16 Q. So above the sink you see the wall near  
17 the top near the ceiling sweating?

18 A. Yeah, from half -- the top halfway down  
19 and in this bathroom also.

20 Q. In the little toilet stall there?

21 A. That's right. And then --

22 Q. And when did you first notice that?

23 A. It was right after the warranty went

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1           about that, Lance.

2                   MR. GOULD: I don't know that  
3           we produced the warranty.

4   A. If not, I've got a -- it come with the  
5           home.

6   Q. Did you get a consumer manual with the  
7           home?

8   A. Yes, sir. I got the paperwork that's  
9           got everything with it. It's got the  
10          appliance -- every appliance we got in  
11          it and everything.

12                  MR. SIMPSON: Lance, do you  
13          mind, if he gives copies to you, will  
14          you shoot those over to me?

15                  MR. GOULD: Be glad to.

16   Q. The warranty you got in the consumer  
17          manual, is that the one you're suing  
18          about, that one?

19   A. Yes, sir.

20   Q. Is there any other one that you know  
21          of?

22   A. No, sir. I know -- I did -- when all  
23          this happened, I tried to get my -- I

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1       done all the pad myself. I done the  
2       dirt around the -- I put the dirt in  
3       myself and used my own machines to do  
4       the dirt.

5       Q. The home -- you haven't been physically  
6       injured in the house?

7       A. Stumped my toe a time or two.

8       Q. All right. What I'm saying is, you're  
9       not suing because you have any physical  
10      injury in the house?

11      A. No.

12      Q. And this is going to sound like a  
13      kookie question, but I'm going to ask  
14      it. One of the other things the law  
15      might compensate people for are what we  
16      call near misses. Like let's say the  
17      roof was falling in and you dove out of  
18      the way. Nothing like that has  
19      happened?

20      A. No, sir. I thought my wife was going  
21      to tear a roof off a time or two.

22      Q. Okay. So as far as the mental  
23      anguish -- you're not suing because you

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1           have a health problem?

2       A. No.

3       Q. And you're not suing because the home  
4           has physically injured you?

5       A. No.

6       Q. And you're not suing because you had a  
7           near miss?

8       A. (Witness shakes head.)

9       Q. Could you speak for her?

10      A. Yes, sir. I'm sorry.

11      Q. So you're not suing because of a near  
12          miss?

13      A. No, sir.

14      Q. How would you characterize your mental  
15          anguish on a scale of one to ten, one  
16          being just a minor aggravation and ten  
17          being I need to go see a doctor and be  
18          put on antidepressants?

19      A. Ten.

20      Q. You're a ten?

21      A. I did -- that's what Dr. Strickland,  
22          that's what he tried to do. Just  
23          stressed out. He tried to put me on

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1        had you had any conversations with  
2        anyone at Southern Energy?

3        A. No, sir.

4        Q. When was the first time you had a  
5        conversation with anyone at Southern  
6        Energy?

7        A. Right after the man that come out to do  
8        my original work outside. That was the  
9        first Southern Energy person I talked  
10       to because up until that point I think  
11       I was going through Jan the whole time,  
12       or her secretary.

13       Q. So when they came out and did the  
14       service?

15       A. Yeah.

16       Q. And that would have been the year after  
17       you bought it in February?

18       A. Yeah. Yes, because I was dealing with  
19       Jan.

20       Q. Okay.

21       A. The whole time, at first, I was dealing  
22       with Corky's.

23       Q. All right. Who put your back porch on?

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1 I'm not sure that wall is rated to have  
2 that connected up there. You didn't  
3 call anyone at the factory and talk  
4 about that?  
5 A. Uh-uh. (Witness shakes head.)  
6 Q. Is that a no?  
7 A. No, sir.  
8 Q. You're living in the house now?  
9 A. Yes, sir.  
10 Q. And as far as you know, it's habitable?  
11 A. Yes.  
12 Q. No one is ill, that you can prove, from  
13 the house; right?  
14 A. That's right.  
15 Q. Has anyone lied to you from Southern  
16 Energy?  
17 A. Not that I recollect.  
18 Q. Has anyone concealed anything from you  
19 at Southern Energy?  
20 A. Southern Energy? No, sir.  
21 Q. And just so we're clear, there were  
22 indoor air samples taken in your house  
23 by Mr. Parks?

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1 A. Yes, sir.

2 Q. And you're satisfied with your  
3 testimony?

4 A. Yes, sir.

5 Q. All right. I think I'm finished.

6 MR. GOULD: I have a couple  
7 questions.

8 EXAMINATION

9 BY MR. GOULD:

10 Q. If someone at Southern Energy or  
11 Corky's would have told you or provided  
12 you in writing that your walls would  
13 condensate, collect moisture, grow  
14 mold, and eventually deteriorate, would  
15 you have have purchased the home?

16 A. No, sir.

17 Q. When did you --

18 MR. SIMPSON: I'm going to  
19 object to the form of that.

20 Q. When did you purchase the Ionic Breeze  
21 machines you're talking about?

22 A. After they come back and done the  
23 initial testing and we left, where I

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1                   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

2                   REPORTER'S   CERTIFICATE

3                   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

4           STATE OF ALABAMA

5           COUNTY OF MONTGOMERY

6           I do hereby certify that the above  
7           and foregoing transcript was taken down  
8           by me in stenotype, and the questions  
9           and answers thereto were transcribed by  
10          means of computer-aided transcription,  
11          and that the foregoing represents a  
12          true and correct transcript of the  
13          testimony given by said witness.

14          I further certify that I am neither  
15          of counsel, nor any relation to the  
16          parties to the action, nor am I anywise  
17          interested in the result of said case.

18

19

20

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21           Bridgette W. Mitchell,  
            Certified Court Reporter and  
22           Commissioner for the State of  
            Alabama at Large  
23           ACCR No. 231 - Expires 9/30/08